

☐ EXPEDITE
☐ Hearing is Set
Date:
Time:

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON, *ex rel.*
WASHINGTON STATE PUBLIC
DISCLOSURE COMMISSION,

Plaintiff,

v.

LISA MACLEAN, HENRY
UNDERHILL, MOXIE MEDIA,
CONSERVATIVE PAC, and CUT
TAXES PAC,

Defendants.

NO. 10 - 2 - 02428 - 7

COMPLAINT FOR CIVIL
PENALTIES AND FOR INJUNCTIVE
RELIEF FOR VIOLATIONS OF
RCW 42.17

The Plaintiff, for causes of action against the Defendants, alleges as follows:

PARTIES

1.1 Plaintiff is the State of Washington, standing in relation to the Washington State Public Disclosure Commission. The Washington State Public Disclosure Commission (PDC) was established by RCW 42.17.350 and is charged by RCW 42.17.360 - .370 with, among other things, responsibility for enforcing the state public disclosure laws contained in RCW 42.17. The Commission's office is located in Olympia, Washington.

1.2 Defendant Lisa MacLean is a resident of the state of Washington. During certain times related to the allegations in this complaint, Ms. MacLean acted in her capacity as

1 an officer, employee and principal of Moxie Media, on behalf of Moxie Media's clients. At
2 other times, she acted in her capacity as campaign manager, media contact and committee
3 officer for various political committees registered with the PDC for calendar and election year
4 2010.

5 1.3 Defendant Henry Underhill is a resident of the state of Washington. During
6 certain times related to the allegations in this complaint, Mr. Underhill acted in his capacity as
7 an officer, employee and principal of Moxie Media, on behalf of Moxie Media's clients. At
8 other times, he acted in his capacity as a political committee officer for various political
9 committees registered with the PDC for calendar and election year 2010.

10 1.4 Moxie Media is a political consulting firm specializing in direct mail, Internet
11 advertising, and print advertising for Democratic candidates, progressive ballot proposition
12 campaigns, and other clients.

13 1.5 Conservative PAC is a political committee registered with the PDC during
14 election year 2010, and was set up to fund independent expenditures and electioneering
15 communications in support of or oppose to candidates for elected office.

16 1.6 Cut Taxes PAC is a political committee registered with the PDC during election
17 year 2010, engaging in independent expenditures to support or oppose candidates for elected
18 office.

19 JURISDICTION AND VENUE

20 2.1 This Court has subject matter jurisdiction over the Defendants, pursuant to
21 RCW 42.17, and the Attorney General has authority to bring this action pursuant to
22 RCW 42.17.400, RCW 42.17.395(3) and RCW 42.17.360(5).

23 2.2 The Defendants have carried out the violations alleged below, in whole or in
24 part, in Thurston County.

25 2.3 Venue is proper in this Court pursuant to RCW 4.12.
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3 **FACTUAL ALLEGATIONS**

4 3.1 The race for the 38th Legislative District senatorial seat number 2 in Snohomish
5 County included three candidates, Democratic incumbent Senator Jean Berkey, Democratic
6 challenger Nick Harper, and Rod Rieger, who identified himself as a Republican on his PDC
7 Candidate Registration and listed his party preference as "Conservative Party" on the primary
8 ballot.

9 3.2 The 38th Legislative District encompasses the cities of Everett and Marysville
10 located in Snohomish County, Washington.

11 3.3 The Washington State primary election was held on August 17, 2010.

12 3.4 Candidate Harper finished first in the primary election, with candidate Rieger
13 finishing second, and Senator Berkey finishing third. As such, Senator Berkey did not qualify
14 for the November 2, 2010 general election.

15 3.5 During the 2010 primary election, Defendants MacLean, Underhill, and Moxie
16 Media registered multiple political committees with the PDC to conduct independent
17 expenditure political advertising and electioneering communications in various state legislative
18 districts. These particular registered political committees were funded by labor organizations,
19 labor-connected PACs, political committees associated with trial lawyers, and other issue
20 committees.

21 3.6 Included in the political committees registered by principals of Moxie Media
22 were Progress PAC and Stand Up for Citizens PAC, which were organized to do independent
23 expenditures to support candidate Harper and oppose Senator Berkey in the 38th Legislative
24 District race. Progress PAC and Stand Up for Citizens PAC spent approximately \$252,000
25 conducting independent expenditures to oppose Senator Berkey.
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1 3.7 On August 4, 2010, Defendant MacLean approached certain financial
2 contributors to Progress PAC and Stand Up for Citizens PAC, and proposed additional
3 independent expenditures and electioneering communications in the 38th Legislative District in
4 an additional effort to defeat Senator Berkey in the August 17 primary election.

5 3.8 Defendant MacLean proposed creating two new political committees to sponsor
6 two political mailings and telephone contacts to targeted 38th Legislative District voters. These
7 independent expenditures would be designed to support candidate Rieger and oppose Senator
8 Berkey. The purpose of creating two new political committees was for one to receive
9 contributions and then contribute them to the second committee to obscure the true source of
10 funding for the political activity.

11 3.9 Defendant MacLean's stated intent behind this strategy was to defeat Senator
12 Berkey in the 2010 primary election. Defendant MacLean's proposal included doing mailings
13 and automated telephone calls in the last days before the election.

14 3.10 By August 5, 2010, Defendant MacLean secured funding, through another
15 political committee she established, Second Defense PAC. Ultimately, three Second Defense
16 PAC contributors approved of Defendant MacLean's proposal which included the transfer of
17 contributions they had previously made to Second Defense PAC, to the new committees she
18 was going to create. These actions created a reportable pledged contribution.

19 3.11 The three identified organizations which approved of Defendant MacLean's
20 proposal were DIME PAC, a political committee registered with the PDC, Washington
21 Federation of State Employees (WFSE), and Forward PAC, a political committee registered
22 with the PDC.

23 3.12 After coming to an agreement with the three contributors concerning funding
24 for the planned expenditures, Ms. MacLean consulted extensively with these same
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1 organizations about the specific message that would be used in the communications to oppose
2 Senator Berkey and support candidate Rieger.

3 3.13 As a result of these agreements, on August 5, 2010, Defendants filed committee
4 registration forms for Defendants Conservative PAC and Cut Taxes PAC with the PDC. These
5 forms did not reveal Defendants MacLean and Moxie Media's relationship or affiliation to the
6 committees or the names and addresses of all related or affiliated committees or other persons
7 (including contributors to Second Defense PAC, on whose behalf the work would be
8 performed) and the nature of the relationship or affiliation.

9 3.14 In the week before the August 17, 2010 primary election, Defendants MacLean
10 and Underhill, working through Defendant Cut Taxes PAC, sponsored two mailings and one
11 automated telephone call targeted to likely Republican and Independent primary voters. The
12 communications differed significantly from the advertisements sponsored previously by
13 Progress PAC and Stand Up For Citizens PAC, which supported candidate Harper and opposed
14 Senator Berkey.

15 3.15 The advertising sponsored by Cut Taxes PAC criticized Senator Berkey for
16 votes she had taken to raise taxes, and supported candidate Rieger. The mailings and
17 automated telephone call identified Cut Taxes PAC as the sponsor, and Conservative PAC as
18 Cut Taxes PAC's top contributor.

19 3.16 The mailings further identified Defendant Underhill as an individual who
20 established, maintained, or controlled Cut Taxes PAC. However, Defendant MacLean really
21 was the decision maker with respect to the activities of Conservative PAC and Cut Taxes PAC.

22 3.17 In her written communications to Defendant Moxie Media clients, Defendant
23 MacLean stated her intent to obscure the clients' sponsorship of mailings and the automated
24 telephone call and acknowledged that all concerned understood this to be controversial.
25 Defendant MacLean told her clients that their funding of the Cut Taxes PAC activities would
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1 not be disclosed until after the August 17, 2010 primary election, and she took steps
2 specifically intended to facilitate that outcome. She established two layers of political
3 committees to sponsor the anti-Berkey/pro-Rieger advertising, so that neither Second Defense
4 PAC nor its underlying donors would be identified in the communications.

5 3.18 Defendant Conservative PAC was required to disclose the \$9,000 pledged
6 contribution from Second Defense PAC on its initial C-4 report (Summary of Campaign
7 Receipts and Expenditures) due August 9, 2010. Defendant Cut Taxes PAC was required to
8 disclose the \$9,000 pledged contribution from Defendant Conservative PAC on the same day.
9 The C-4 reports filed August 10, 2010 by Defendants Conservative PAC and Cut Taxes PAC,
10 however, did not list any pledges or other contributions received, and no expenditures other
11 than a debt to Defendant Moxie Media held by Defendant Cut Taxes PAC. The pledged
12 contribution from Second Defense PAC was not disclosed until September 10, 2010, 32 days
13 late, and 24 days after the 2010 primary election.

14 3.19 On August 11, August 12, and August 16, 2010, Defendant Cut Taxes PAC
15 filed three C-6 reports (required for independent expenditures) disclosing the anti-Berkey/pro-
16 Rieger communications as independent expenditures (for the telephone call) or electioneering
17 communications (for the mailings). These reports did not include any information about the
18 source of funding for the electioneering communication mailings.

19 3.20 As a result of Defendant MacLean's implemented strategy, as of the August 17
20 primary, district voters had no ability to determine the actual source of funds behind the
21 Defendant Cut Taxes PAC activities.

22 3.21 Defendant MacLean made, directed, or authorized contribution, expenditure,
23 strategic, and policy decisions on behalf of Defendants Conservative PAC and Cut Taxes PAC.
24 As such, her name was required to be listed on the committees' C1-PC registration statements
25 to identify her as an officer of both committees.
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3.22 Defendant MacLean did not identify herself on the registration statements in order to hide her role in the committees' activities.

3.23 Defendant Underhill knew, or should have known, that Defendant MacLean was required to be identified on the committee registration forms for Defendants Conservative PAC and Cut Taxes PAC because she was controlling the activities of both committees.

3.24 Defendant MacLean established, maintained, and controlled Defendant Cut Taxes PAC. As such, either she or Defendant Moxie Media should have been identified in the sponsor identification on the Defendant Cut Taxes PAC independent expenditures and electioneering communications.

CLAIMS

Based on the foregoing allegations, Plaintiff makes the following claims, each of which may give rise to multiple violations of the law:

4.1 First Claim: Plaintiff reasserts the allegations made above and further asserts that the Defendants, in violation of RCW 42.17.120, acted to conceal the true participants in the campaign activities of Defendants Conservative PAC and Cut Taxes PAC, the true source of funding for Defendant Cut Taxes PAC activities, and the fact that a pledge had been made for funding for the activities of Defendants Conservative PAC and Cut Taxes PAC.

4.2 Second Claim: Plaintiff reasserts the allegations made above and further asserts that Defendants, in violation of RCW 42.17.040, failed to properly file the committee registration forms for Defendants Conservative PAC and Cut Taxes PAC.

4.3 Third Claim: Plaintiff reasserts the allegations made above and further asserts that Defendants, in violation of RCW 42.17.080 and .090, failed to properly and timely file reports of contributions pledged to the Defendants Conservative PAC and Cut Taxes PAC.

4.4 Fourth Claim: Plaintiff reasserts the allegations made above and further asserts that Defendants, in violation of RCW 42.17.510, failed to properly identify the sponsors on the two mailings and automated calls at issue in this matter.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests the following relief as provided by statute:


5.1 For such remedies as the court may deem appropriate under RCW 42.17.390, all to be determined at trial;

5.2 For all costs of investigation and trial, including reasonable attorneys' fees, as authorized by RCW 42.17.400(5); and

5.4 For such other relief that the Court deems appropriate.

DATED this 29th day of October, 2010.

ROBERT M. McKENNA
Attorney General


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Senior Assistant Attorney General
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